

**AN ORDINANCE AUTHORIZING PERIODIC INSPECTIONS OF
RESIDENTIAL RENTAL PROPERTY AND OTHER REGULATIONS**

Whereas, council having considered the substance of this ordinance in a public hearing held on 2/20/12;

Whereas, the city administration certifies that notice has been provided regarding the public hearing in accordance with G.S. 160A-364;

Whereas, residential housing in the City consists of owner occupied and tenant occupied properties. The substantial majority of complaints about and violations of Article VI., Chapter 10 captioned "Housing Code" occurs on tenant occupied property;

Whereas, the City through its Department of Neighborhood Improvement Services ("NIS") usually conducts a housing code inspection based on a complaint that a dwelling is in a deteriorated or dilapidated condition. Thus, most housing code enforcement in the City is complaint driven;

Whereas, a housing code enforcement program that targets residential rental housing in the city for periodic inspections is proactive in nature in that such a plan seeks to address housing code violations before a complaint is received;

Whereas, G.S. 160A-424 (a) provides that an inspection department may make periodic inspections of a residential building when there is reasonable cause to believe that unsafe, unsanitary or otherwise unlawful conditions exist in such building and G.S. 160A-424(a) defines when reasonable cause exists;

Whereas, G.S. 160A-424(b) provides that a city may require periodic inspections of residential buildings as part of a targeted effort within a geographic area that has been designated by the city council;

Whereas, G.S. 160A-174 provides that cities in North Carolina may adopt ordinances that define, prohibit or abate conditions that are detrimental to health, safety or welfare of its citizens;

Whereas, G.S. 160A-194 provides that a city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, and professions; and

Whereas, requiring owners of residential rental property to register the property when such property is found with 3 or more verified violations of the housing code, unsafe building laws or other codes promotes responsible management and safeguards property values by giving various city departments (code enforcement, fire and police) data on how to reach the owner;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DURHAM:

Section 1: Chapter 10 of the Durham City Code is amended by adding a new article (Article VIII) to read:

“Article VIII. Periodic Inspection and Registration of Rental Dwellings

Division 1. Generally

Section 10-350. Definitions.

As used in this Article, unless the context clearly requires otherwise, the following words have the listed meanings. The singular includes the plural, unless otherwise specified.

Administrator means administrator as defined in Section 10-230.

Dwelling means dwelling as defined in Section 10-230.

Dwelling unit means dwelling unit as defined in Section 10-230.

Housing code means code sections found in Article VI, Chap. 10. captioned “Housing Code.”

Landlord means any rental management company, rental agency, manager or any other person paid by the *owner* to manage any rental unit which is leased or offered for lease.

Other Codes means code sections found in Article VI., Chap. 26 captioned “Removal of Trash and Undergrowth from Property” and code sections found in Art. V., Div. 2, Chp. 26 captioned “Removal and Disposition of Abandoned Vehicles, Hazardous Vehicles and Junked Motor Vehicles.”

Owner means owner as defined in Section 10-230.

Periodic Inspection means an inspection that occurs at regular or scheduled intervals or occurs from time to time with or without specific cause.

Rental Unit means a dwelling, dwelling unit or rooming unit that is leased or offered for lease.

Residential rental property means (i) a building containing at least one rental unit, regardless of whether other portions of the building are available for residential use by tenants; and (ii) the tax lot or tax lots on which the building is located. If more than one building is located entirely on a single tax lot, the buildings and the tax lot are one residential rental property.

Rooming unit means rooming unit as defined in Section 10-230.

Tax lot means a parcel of land as specified in the county tax office record that shows the parcel's ownership; dimensions; location, including street number, if any; and a parcel identifier number (PIN) that is unique to each tax lot.

Unsafe building law means code sections found in Article VII, Div. 1, Chap. 10 captioned "Supplemental Procedures" and G.S. 160A-424 et seq. when these laws were applied against a residential building.

Verified violation means each noncompliant condition listed or set forth in a complaint and/or notice issued pursuant to the housing code, unsafe building law or other codes.

Sec. 10-351-10-360. Reserved.

Division 2. Periodic Inspections

Section 10-361. *Periodic Inspections. Council Findings.*

Council finds that most complaints and notices issued under the housing code originate from dwellings (residential buildings) that are not owner-occupied. Since the majority of complaints and violations of the housing code arise from dwellings that are not owner-occupied, the administrator or housing inspector may make periodic inspections that solely target residential rental property.

Section 10-362. Reasonable Cause Periodic Inspections.

- a. The administrator or housing inspector shall make periodic inspections when there is reasonable cause to believe that unsafe, unsanitary or otherwise hazardous or unlawful conditions exist in a residential building or structure. Residential rental property shall be placed in a program of periodic inspections when reasonable cause is established as follows:
 1. The owner or landlord has 3 or more verified violations of the housing code or unsafe building law within a 12-month period, then all residential buildings owned or managed by the owner or landlord within city limits

shall be placed in the program;

2. The building has been the subject of a complaint that substandard conditions exist within the building or there has been a request that the building be inspected, the entire building shall be placed in the program;
3. The administrator or housing inspector has actual knowledge of an unsafe condition within the building, the entire building shall be placed in the program; or
4. Violations of the housing code, unsafe building law or other codes are visible on the residential rental property from the outside of the property then the entire property shall be placed in the program.

b. Program regarding Reasonable Cause Inspections. The administrator shall establish a program to implement reasonable cause periodic inspections authorized by this section. Such program of periodic inspection shall only place residential rental properties in the program.

Section 10-363. Council Designated Area Periodic Inspections.

a. The city hereby requires periodic inspections of residential buildings or structures as part of a targeted effort within the geographic areas specified by council. The provisions of G.S. 160A-424(b) shall be followed in designating the specified geographic areas.

b. Program regarding Council Designated Area Inspections. The city manager shall establish a program that implements this section. The program shall focus solely on the periodic inspection of *residential rental property*.

Section 10-364- 10-370 Reserved.

Division 3. Residential Rental Property Registration

Section 10-371. Residential Rental Property Registration Requirement

- (a) Rental Registration Program established. The City hereby authorizes the adoption of a residential rental property registration program for certain residential rental properties that have had prior code violations as set forth in this division. The registration program shall require the owner of residential rental property to supply the City with the owner's contact information and such other information as the Department of Neighborhood Improvement Services (NIS) or administrator deems necessary.
- (b) An owner of residential rental property is required to register the entire property when the property has been found with 3 or more verified violations of the housing code, unsafe building law or other codes within the previous 12 months.

- (c) **Registration Program.** The administrator shall establish a program to further implement the registration of residential rental property covered by this division.

Section 10-372. Registration Fee Imposed.

- a. The owner of residential rental property required to register the property shall pay a registration fee on an annual basis. The fee shall be based on the number of rental units on the property. The registration fee shall be as approved by council from time to time.
- b. Duration of program. A residential rental property shall be removed from the registration program when the property has not received 3 or more verified violations of the housing code, unsafe building law or other codes for any 12 month period after the property was registered.

Section 10-373. Service of Notices and Orders; Registration Requirement

- a) When an owner of residential rental property is required to register the property and pay a fee, then administrator shall serve notice on the owner by regular mail. Service of notice shall be deemed sufficient on the date of mailing if the regular mail is not returned by the post office within 10 days after the mailing.
- b) If the whereabouts of any owners or other persons are unknown and cannot be ascertained by the administrator in the exercise of reasonable diligence, and the administrator makes an affidavit to that effect, then the serving of such notice upon the unknown owner or other persons may be made by publication in a newspaper having general circulation in the city. When service is made by publication, a notice of the registration requirement shall be posted in a conspicuous place on the premises thereby affected.
- c) Orders and any other papers issued under this division shall be served in the same manner as notices in this section and service shall be deemed complete in the same manner.

Section 10-374. Application

- a. The owner, upon receiving notice of the requirement to register, shall file an application with the Department of Neighborhood Improvement Services ("NIS") within 30 days from the date the notice was mailed. Every application for rental registration shall be filed on a form approved by the administrator and shall be filed with NIS.
- b. Registration. The Department of Neighborhood Improvement Services, upon approval of the application, will issue a registration indicating that the property has been registered. If the application is denied, the owner shall be notified and shall be subject to penalties and any other lawful sanctions until application is approved. An owner may appeal a denial of application for registration as provided in this division. A registration is not transferable to a subsequent owner of the residential rental property.

Section 10-375. Standards.

- a. The owner shall respond to each department making contact, either in person or by telephone, within two (2) business days after being contacted at the telephone number provided in the application or renewal application by the Department of Neighborhood Improvement Services ("NIS"). The owner shall designate an alternate person as responsible for responding to calls for assistance from the NIS when the department is unable to be in contact with the owner within two (2) business days of the initial contact. The designated alternate must be located within city limits and be authorized by the owner to respond to calls. The designation shall be effective only when the alternate person is identified and agrees to accept the duty by signature on the application or renewal application.
- b. The owner shall maintain a current list of occupants. Upon request by the administrator, code enforcement officers, police, and fire and emergency response personnel investigating violations or potential violations of the code or state law, the owner shall present the list of occupants to the investigating personnel.

Sec. 10-376. COMPLIANCE WITH PROVISIONS.

- (a) Any owner of residential rental property required to register the property who files a complete application for registration and pays fee within 30 days following service of notice that registration is required shall be deemed compliant with this division unless and until the application is denied.
- (b) Registration applications without payment of registration fees are void.
- (c) It shall be unlawful to rent, to receive rental income from, or to offer for rent a rental unit or units in violation of this division beginning 30 days after service of notice by the administrator that registration is required under this division, unless a complete application has been approved by the Department of Neighborhood Improvement Services for the residential rental property and application fee paid.

Section 10-377. Appeal

- a. Any owner of residential rental property served with notice that the property has to be registered or that **owner's application is denied may appeal** the notice in the following manner:
 1. An appeal shall be filed in writing with the administrator within 30 days from the date the notice was mailed and shall specify the grounds thereof. An appeal shall stay all proceedings under this division. The administrator shall notify owner of hearing date. After the hearing is held, the administrator shall issue an order which shall be mailed to the owner. If administrator deems that notice requiring registration is valid, then order shall give owner 30 days from the date the order was mailed to file application.

- b. An appeal from the administrator's order may be taken by giving written notice of appeal to the Housing Appeals Board ("board") within 30 days from the date the order was mailed. The notice of appeal shall be filed with the administrator who shall transmit the notice of appeal and any other related papers to the board. The appeal shall be placed on the board agenda at its next regular meeting or within a reasonable time. The board shall issue a written order stating whether the disputed application of this division will be approved without change or modified or reversed. If board deems that notice is valid, upholds order or otherwise requires compliance with this division, then order shall give owner 30 days from the date the order was mailed to file application or otherwise comply with this division.

Sec. 10-378. ENFORCEMENT.

(a) Failure to Register Civil Penalties.

(1) Any owner who fails to register the *residential rental property* or pay registration fee following written notice and opportunity to comply as set forth in this division or otherwise comply with this division shall be subject to a civil penalty as follows:

- (a) The initial civil penalty shall be \$300 and an additional civil penalty of \$300 shall be imposed each month. The penalty shall be imposed until the registration application is approved and the applicable fee is paid. However, the maximum cumulative civil penalty *shall* not exceed \$5,000.
- (b) The administrator shall formulate written guidelines to use in assessing and calculating civil penalties. Such written guidelines shall authorize the city manager to discharge certain penalties deemed uncollectible after good faith efforts have been made to collect such penalties. Such written guidelines shall be incorporated into the program that implements this division.

(b) **Equitable remedies, including injunctions.** The City may apply to the courts for any appropriate equitable remedy to enforce the provisions of this division including mandatory or prohibitory injunctions.

(c) **Not a criminal violation.** Any violation of this division shall be deemed a non-criminal violation and shall not be a misdemeanor or infraction pursuant to G.S. 14-4.

Section 2: The Durham City Code is amended by deleting section 10-238(c) and rewriting section 10-238(c) to read as follows:

"Section 10-238(c). Inspection of Dwellings

- (a) *Inspections; duty of owner and occupants.* For the purpose of making inspections, the administrator is hereby authorized to enter, examine and survey at all reasonable times, all dwellings, dwelling units and rooming units and premises

as defined in this article. The owner, occupant or other person in charge of any dwelling, dwelling unit or rooming unit shall, upon being presented with proper credentials, give the administrator free access to such dwelling, dwelling unit or rooming unit and its premises at all reasonable times for the purpose of such inspection, examination and survey. If the owner or occupant refuses admission for this purpose, admission may be obtained through the provisions of G.S. 15-27.2 et seq.

Section 3. This ordinance shall be in full force and effect from the date of passa